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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

AMY JU WONG,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE  
COUNTY,

Respondent;

ELIZABETH E. WONG, as Successor  
Trustee, etc.,

Real Party in Interest.

G057297

(Super. Ct. No. 95D011667)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Julie A. Palafox, Judge. Petition granted; writ issued.

Law offices of Marjorie G. Fuller and Marjorie Gross Fuller for Petitioner.

Sitzer Law Group and Michael Ferdinand Sitzer; Blanchard Krasner & French and Mark A. Krasner; and Michael Leight for Real Party in Interest.

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THE COURT:\*

Petitioner Amy Ju Wong filed a request for order seeking relief against real party in interest Elizabeth E. Wong in 2016. Petitioner has been stymied in her efforts to try the merits of this dispute. Most recently, trial was set for January 22, 2019. But the trial court entered an order on January 23, 2019, ruling that trial court proceedings were stayed as a result of an appeal filed by real party in interest Elizabeth Wong and the effect of Code of Civil Procedure section 916, subdivision (a).<sup>1</sup> (See *In re Marriage of Wong* (March 7, 2019, G057202) \_\_ Cal.App.5th \_\_.)

On January 31, 2019, petitioner filed a petition for writ of mandate, prohibition, or other appropriate relief. Petitioner contends the court erred by issuing a stay order and declining to proceed with trial. Petitioner asks this court to issue a peremptory writ in the first instance (§§ 1088, 1105) directing respondent court to set a trial date as soon as possible.

We invited opposition, and indicated a peremptory writ of mandate in the first instance was requested by petitioner. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180 [minimum notice requirements for peremptory writ in the first instance include notice that such relief is being considered and opportunity to file opposition].) Real party filed an opposition.

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\* Before O’Leary, P.J., Bedsworth, J., and Goethals, J.

<sup>1</sup> All statutory references are to the Code of Civil Procedure.

A peremptory writ in the first instance should issue only in cases of “unusual urgency” or “clear error under well-settled principles of law and undisputed facts . . . .” (*Banning Ranch Conservancy v. Superior Court* (2011) 193 Cal.App.4th 903, 919.) Both rationales apply in this case.

First, the urgency rationale applies. The parties contest whether this is a section 36 case, entitled to special preference for prompt resolution. (See *Fox v. Superior Court* (2018) 21 Cal.App.5th 529, 536 [§ 36 cases present “unusual urgency, requiring acceleration of our normal process in writ proceedings”].) It appears that petitioner may have misstated the record in her verified petition by claiming that “[petitioner] received a Code of Civil Procedure § 36(a) preference for trial as a result of her age and health.” The petition’s citation to the record does not reference a copy of an order providing a section 36 preference (and our independent review of the record provided does not disclose such an order elsewhere). Real party flatly denies the existence of an order granting such a trial preference. But the following facts are uncontested: (1) this matter has been pending since 2016; (2) petitioner is 80 years old; (3) this matter was set for trial in January 2019; and (4) real party convinced respondent court to call off the trial as a result of an appeal filed two weeks prior to the scheduled trial date. Regardless of any formal trial preference order, issuance of a peremptory writ of mandate in the first instance is the most efficacious way to ensure that trial goes forward as quickly as possible in this long-delayed matter.

Second, respondent court clearly erred in light of the previous and contemporaneous guidance provided to respondent court by this court. (See *In re Marriage of Wong* (May 25, 2018, G056148) [nonpub. opn.] (*Wong I*); *In re Marriage of Wong* (Sep. 19, 2018, G056616) [nonpub. opn.] (*Wong II*); *In re Marriage of Wong* (March 7, 2019, G057202) \_\_ Cal.App.5th \_\_ (*Wong III*); *In re Marriage of Wong* (March 7, 2019, G056616) [nonpub. opn.] (*Wong IV*).) To the extent the December 10,

2018 orders on appeal in *Wong III* are appealable, they do not trigger a stay of trial court proceedings pursuant to section 916, subdivision (a).

In light of the urgency of proceeding with trial and the clear error committed by respondent court, we reject real party's request for oral argument in this proceeding. (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1252-1261 [no right to oral argument when peremptory writ in the first instance properly issues].)

Finally, real party contends that the petition must be denied because the verification provided by attorney Marjorie G. Fuller is purportedly defective. (§ 1086; Cal. Rules of Court, rule 8.486(a)(4).) Petitioner or counsel must verify the facts stated in a petition based on their personal knowledge, not based on information and belief. (*Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 476.) Attorney Fuller's verification states: "I have read the foregoing petition for writ of mandate and/or prohibition and know its contents. Because of my familiarity with the relevant facts pertaining to the trial court proceedings, I, rather than the petitioner, verify this petition. [¶] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." The verification does not use the phrase "personal knowledge." But attorney Fuller represents her "familiarity with the relevant facts" and "verif[ies]" the petition. She does not state that her verification is provided upon information and belief. Real party also asserts that the verification, by using the phrase "the foregoing," did not actually verify the truth of the facts in the petition. We disagree. The verification was sufficient.<sup>2</sup>

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<sup>2</sup> We note, however, our dissatisfaction with the petition in its apparent failure to accurately provide all of the facts and necessary exhibits regarding the existence of a section 36 trial preference.

## DISPOSITION

Let a peremptory writ of mandate issue directing respondent court to vacate its January 23, 2019 order staying trial court proceedings and to issue a new order promptly setting the disputed issues for trial. Unless a continuance is stipulated to by petitioner, trial shall begin no later than May 6, 2019.

Petitioner shall be awarded her costs incurred in this proceeding. (Cal. Rules of Court, rule 8.493(a)(1)(A).) In the interests of justice and to prevent frustration of the relief granted, this decision is immediately final upon filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).) Should they deem it desirable, the parties may stipulate to immediate issuance of the remittitur. (Cal. Rules of Court, rules 8.272(c)(1), 8.490(d).) However, respondent court is instructed that its ability to proceed on this matter is not stayed pending issuance of the remittitur in this writ proceeding. (*In re Brandy R.* (2007) 150 Cal.App.4th 607, 609 [action in trial court is not “automatically stayed pending issuance of the remittitur from” a writ proceeding].)